**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 657 of 2006**
**With**
**CIVIL APPLICATION Nos. 3513 and 10781 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.S.SHAH**
and
**HONOURABLE MR.JUSTICE K.M.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**UNITED INDIA INSURANCE CO. LTD - Appellant(s)**
**Versus**
**DHANLAXMIBEN SATISHBHAI BHAGAT(PATEL) & 5 - Defendant(s)**

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**Appearance :**
MR RAJNI H MEHTA for Appellant(s) : 1,
MR.HIREN M MODI for Defendant(s) : 1 - 4.
None for Defendant(s) : 5 - 6.

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**CORAM : HONOURABLE MR.JUSTICE M.S.SHAH**

**and**

**HONOURABLE MR.JUSTICE K.M.MEHTA**

**Date : 18/09/2006**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE M.S.SHAH)**

This appeal is directed against the judgment and award dated 21.12.2005 passed by the Motor Accident Claims Tribunal (Aux.), Vadodara in MAC Petition No.417 of 1996 by which the Tribunal has awarded compensation of Rs.13,82,000/- to the claimants with proportionate costs and interest at the rate of 9%p.a. from the date of the claim petition till realization.

2. Deceased Satishbhai Bhagat (Patel) was riding his Kinetic Honda scooter from Bodeli to Sankheda for office work on 1.3.1996 at about 12.45 PM. At that time, the tempo insured by the appellant-insurance company came from the opposite direction and in a collision between the tempo and the scooter, Satishbhai received serious head injuries. During the course of treatment, Satishbhai succumbed to the injuries and his widow and two minor children and his mother filed the claim petition and claimed compensation of Rs.15 lakhs from the driver, owner and insurance company of the tempo.

3. On the question of negligence, after going through the oral and documentary evidence on record, the Tribunal held that the deceased died in a motor vehicle accident caused by the rash and negligent driving of the tempo by original opponent No.1.

4. Although Mr Mehta, learned counsel for the appellant- insurance company made an attempt to assail the said finding, in the facts and circumstances of the case and the evidence on record, he has not been able to make any dent to the said finding and we do not think that any further discussion is called for on the question of negligence.

5. Coming to the question of quantum of compensation, the Tribunal gave the following reasoning to assess and award compensation for loss of future dependency at Rs.13,65,000/- :-

> "In support of her say, the applicant have produced the income tax return at Exh.26 in which the total income is shown as Rs.89,989/- round about 90,000/- per annum i.e. to say Rs.7,500/- per month and if he would have survive then he would have been earned Rs.10,000/- per month and hence to ascertain his monthly income (10,000 + 7,500 = 17,500) divided by 2, which comes to Rs.8,750/- per month is the prospective income. Thus, Rs.8,750/- X 3 = Rs.26,250/- divided by 2 comes to Rs.13,125/-, in which 1/3rd towards expenses of the deceased himself should be deducted which comes to Rs.8,750/-p.m.. So, annual income comes to Rs.1,05,000/- (Rs.8,750 X 12). Looking to the School Leaving Certificate Exh.23, the deceased was aged about 46 years old at the time of

> accident. Therefore, as per Second Schedule of MV Act, a multiplier of 13 is applied. Hence, the amount of Rs.13,65,000/- (Rs.1,05,000 X 13) can be awarded towards loss of future dependency."

Further awarding Rs.10,000/- as the conventional amount of compensation for loss of consortium "etc." and Rs.5,000/- towards funeral expenses and Rs.2,000/- towards transportation charges, the Tribunal made a total award of Rs.13,82,000/-.

6. Mr Mehta, learned counsel for the insurance company has vehemently challenged the aforesaid reasoning and finding of the Tribunal on the score of compensation for loss of future dependency.

7. We find considerable substance in the said submission. Once the Tribunal assessed the actual income of the deceased on the date of the accident at Rs.7,500/- per month, we fail to see how the learned Judge assessed the prospective income of the deceased at Rs.8,750/- then multiplied it by 3 and divided it by 2 to arrive at the figure of Rs.13,125/-.

As per the principles laid down by this Court in several decisions for computing the prospective income, all that the Tribunal is required to do is to double the present actual income, add it to the actual income and divide the total by two. In

our view, the easiest method of calculating the future income or the prospective income is to take the actual income and add thereto 50% of the actual income. On this basis, the prospective income of the deceased would be Rs.7500 + 50% of 7500 = Rs.11,250/. Deducting therefrom 1/3rd amount towards the expenses which the deceased would have incurred on himself, the actual dependency benefit would come to Rs.7500/.

In view of the above, the loss of dependency benefit has to be assessed at Rs.7,500/- and multiplying the said amount by 12 months, the loss of annual dependency benefit would work out to Rs.90,000/-.

8. The above calculations will also show that increasing the actual income by 50% to arrive at the prospective income (that is multiplying the actual income by 3/2) and thereafter reducing the same by 1/3 amount which the deceased would have spent on himself, the remaining amount would be 2/3rd of the prospective income and this final figure would be the amount of dependency benefit which is being lost by the claimants on account of the death of the deceased in the motor vehicle accident. Hence, in a given case where the age, occupation and future career prospects of the deceased justify taking a higher amount as the prospective income of the deceased as compared to the actual income, from all practical purposes the easiest method of computing

the dependency benefit would be to take the actual monthly/annual income of the deceased on the date of the accident itself as the monthly/annual dependency benefit, as the aforesaid calculations would clearly bear out.

9. Coming to the question of multiplier, Mr Mehta has vehemently submitted that the multiplier of 13 adopted by the Tribunal is on the higher side and has submitted that when the multiplicand is a high amount, the Apex Court as well as this Court have been adopting a multiplier lower than the figure indicated in the Second Schedule to the Motor Vehicles Act, 1988.

10. On the other hand, Mr Hiren Modi, learned advocate for the respondent- claimants has supported the judgment of the Tribunal and has submitted that the multiplier of 13 is as per the Second Schedule to the Act and, therefore, no reduction of the multiplier is called for.

11. Having heard the learned counsel for the parties, we are of the view that even proceeding on the basis that when the multiplicand is on the higher side, the multiplier cannot be as high as the figure indicated in the Second Schedule, in the facts of the present case, we find that the deceased was not only employed with a private company but he was also acting as a working partner in the firm called - Patel Investment. In the facts and circumstances of

the present case, therefore, it would be just and proper to adopt the multiplier of 12 years. Accordingly, the compensation for loss of dependency benefit would work out to Rs.90,000 X 12 = Rs.10,80,000/-. Adding thereto, Rs.10,000/- as the conventional amount for loss to the estate and another Rs.10,000/- for loss of consortium, plus Rs.7,000/- as awarded by the Tribunal for funeral expenses and transportation charges, the total amount of compensation would come to Rs.11,07,000/-.

11. Mr Mehta for the appellant- insurance company states that pursuant to the order dated 23.3.2006 passed by this Court in Civil Application No.3513 of 2006, the insurance company had deposited the amount of compensation as awarded by the Tribunal together with interest and costs, being Rs.24,32,960/- and that the amount was deposited as per the said interim order of this Court.

12. In view of the above discussion, the appeal is partly allowed in the following terms:-

A. The amount of compensation awarded by the Tribunal at Rs.13,82,000/- is reduced to Rs.11,07,000/-. The amount of compensation shall be paid with proportionate costs and with interest at the rate of 9%p.a. from the date of the claim petition till the date of deposit. This award is made jointly and severally against all the opponents in the claim petition i.e. the appellant- insurance

company as well as the driver and owner of the tempo involved in the accident.

The amount of compensation, if any, paid or deposited under Section 140 of the Act shall be adjusted against the aforesaid amount awarded under this judgment.

B. The Tribunal shall liquidate the fixed deposits and refund the differential amount being Rs.2,75,000/- with proportionate costs and interest thereon to the appellant- insurance company within one month from the date of receipt of the writ of this Court.

C. The balance amount shall be apportioned in favor of the claimants i.e. widow, daughter, son and mother of the deceased in the ratio of 70:10:10:10 respectively.

D. After apportionment in favour of the claimants as aforesaid, the Tribunal shall invest the entire amount payable to claimant No.1 (widow of the deceased) in fixed deposits with a nationalized bank near her residence for a period of five years with usual conditions about prohibition against premature encashment/ encumbrance, etc. of the deposits and with permission to claimant No.1 to withdraw the interest periodically accruing on such fixed deposits.

Out of the amounts payable to claimant Nos.2, 3 and 4, 50% of the amounts shall be invested in fixed deposits with a nationalized bank near the residence of the claimants for a period of five years with usual conditions about prohibition against premature encashment/ encumbrance, etc. of the deposits and with permission to the respective claimants to withdraw the interest periodically accruing on such fixed deposits. The balance 50% amount payable to claimant Nos.2, 3 and 4 shall be disbursed to them by account payee cheques in favour of the respective claimants after proper verification and after informing the claimants about the amounts being disbursed to them, the amounts being invested and the conditions on which the investments are made.

The investments shall be made in more than one fixed deposits of varying amounts.

E. In case the claimants require any further amounts on account of genuine need in future, it will be open to them to apply to the Tribunal for further disbursement. However, in such a case, the disbursement shall be made first from out of the amounts payable to claimant Nos.2 and 3.

13. Since the appeal is disposed of, Civil Application No.3513 of 2006 filed by the insurance company as well as Civil Application No.10781 of 2006 filed by the claimants for disbursement do not

survive and are accordingly disposed of as infructuous.

(M.S. SHAH, J.)

(K.M. MEHTA, J.)

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